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SUPREME COURT OF THE UNITED STATES.

No. 151.

GEORGE W. WATTERSTON, PLAINTIFF IN ERROR,

vs.

EDWARD NOBLE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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GIDEON, Print.

UNITED STATES OF AMERICA,
Eastern District of the State of Louisiana.

EDWARD NOBLE
vs.
GEORGE W. WATTERSTON. } No. 2,912.

Pleas and proceedings before the hon. the circuit court of the United States in and for the fifth judicial circuit and district aforesaid, held at the city of New Orleans, on the ninth of June, 1858, being the April term, A. D. 1858, of the said court.

Be it remembered, that heretofore, to wit, on the second day of April, A. D. 1858, came Edward Noble, by his attorneys, S. B. Noble and Ogden & Stansbury, esq's, into the clerk's office of the said court, and filed a petition, which is in words and figures as follows:

Petition.

To the honorable the Judges of the Circuit Court of the United States for the eastern district of the State of Louisiana:

The petition of Edward Noble, who is a citizen of the State of South Carolina, with respect represents, that George W. Watterston, who is a citizen of the State of Louisiana, residing in the parish of Livingston, is indebted unto your petitioner in the sum of three thousand seven hundred eighteen dollars and sixty-five cents, with interest thereon at the rate of eight per cent. per annum, from the 9th day of March, 1855, for this: that your petitioner is the holder and owner of the promissory note marked A, annexed to and made a part of this petition, made by said Watterston to his own order, for the sum above set out, dated at New Orleans, May 3d, 1856, and payable eight months after date, with interest as above stated. Petitioner shows, that on the 14th day of April, 1857, the said Watterston executed a mortgage before P. J. Starns, the recorder of the parish of Livingston, in order to secure the payment of the said note, upon the following property, to wit: Section 38 in township No. 7 south, of range No. 4 east, containing six hundred and forty-five $\frac{38}{100}$ acres; section 37 in same township and range, containing eight hundred and fifty-eight $\frac{72}{100}$ acres; and section 41 in township No. 6 south, of range 5 east, containing six hundred and thirty-eight $\frac{70}{100}$ acres; all which lands are situated in the parish of Livingston aforesaid, as will more fully appear from a duly certified copy of the act of mortgage annexed to this petition, and made a part of the same.

Wherefore, as the said George W. Watterston refuses to pay

said note after amicable demand, your petitioner prays that he may be cited, that after due proceedings, there be judgment against him for the claim above set out, principal and interest, with mortgage upon the property hereinbefore described as mortgaged, and for all such other relief as equity may require.

S. B. NOBLE and
A. H. OGDEN & STANSBURY,
Att'ys for Petitioners.

A.—Note filed with Petition.

$3,718 65. NEW ORLEANS, *May 3d*, 1856.

Eight months after date I promise to pay to the order of myself thirty-seven hundred and eighteen $\frac{65}{100}$ dollars, with interest from March 9th, 1855, at eight per cent. per annum until paid, for value rec'd, payable at the office of Watt, Noble & Mobley, New Orleans, La.

G. W. WATTERSTON.

Endorsed: G. W. WATTERSTON.

Ne varietur. April 14th, 1857.

P. J. STARNS, *Recorder.*

Act of Mortgage, Filed with Petition.

STATE OF LOUISIANA,
Parish of Livingston.

Be it remembered, that on this fourteenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, before me, the undersigned, recorder of the parish of Livingston, in the State of Louisiana, personally appeared George W. Watterston, of said parish, who did declare that, acknowledging an indebtedness to Edward Noble, of the State of South Carolina, in the sum of three thousand seven hundred and eighteen $\frac{65}{100}$ dollars, with interest thereon, at the rate of eight per cent. per annum, from March 9th, 1855, according to the tenor of the within obligation to me exhibited, and by me duly paraphed of even date with this act, he, the said Watterston, does by these presents mortgage and hypothecate to said Noble, his heirs, executors, administrators and assigns, the following described lands in the parish of Livingston, viz: section thirty-eight, in township No. 7 south, of range No. four east, containing six hundred and forty-five $\frac{5}{100}$ acres; section thirty-seven, in same township and range, containing eight hundred and fifty-eight $\frac{72}{100}$ acres; and section forty-one, in township No. six south, of range five east, containing six hundred and thirty-eight $\frac{70}{100}$ acres.

Now this hypothecation is made upon the following terms and conditions, to wit:

1st, it does not import confession of judgment or authorize ex-

ecution process; 2d, it shall not avail the mortgagee before the first day of April, 1858, when, if not extinguished, the said Noble may avail himself of his rights under it; and, 3d, if the aforesaid debt be not satisfied at the aforesaid time, viz: April 1, 1858, the said Watterston agrees to confess judgment for the amount thereof.

Thus done and signed in my presence, and in that of Asa W. Kinchen and Simpson Kemp, lawful witnesses, the day after date within written.

(Signed by) G. W. WATTERSTON,
EDWARD NOBLE,
By agent, S. B. NOBLE.

ASA W. KINCHEN.
SIMPSON KEMP.

P. J. STARNS,
Recorder.

A true copy of the original, this April 14th, A. D. 1857.
P. J. STARNS,
Recorder.

Exception.—Filed 19th April, 1858.
U. S. Circuit Court.

EDWARD NOBLE
vs.
G. W. WATTERSTON. } 2,912.

Now comes defendant, and to the petition served on him in this case excepts, and says that this court has no jurisdiction over the matters involved in this controversy, the contract sued on being a promissory note, made in the State of Louisiana by a citizen of this State, for the benefit of, and given to, citizens of this State, and that the assignment of said note by Watt, Noble & Mobley, of this State, to Edward Noble, a citizen of the State of South Carolina, cannot give jurisdiction to this court.

2d. That this suit is brought on the promissory note in question, and that judgment with mortgage is claimed on certain property in the parish of Livingston, mortgaged long subsequent to the making the original note forming the basis of the present suit, and that this court, though it might have jurisdiction over the latter contract, has certainly none over the first.

3d. That this court can have no jurisdiction in this transaction, inasmuch as it cannot at the same time render judgment on the note sued on via ordinaria, and with mortgage, as prayed for, under the circumstances of this case.

Wherefore defendant pleads the above exceptions, and prays that the suit be dismissed with costs.

WHITAKER & FELLOWS,
Of Counsel.

Answer.—Filed 19th April, 1858.

U. S. Circuit Court.

EDWARD NOBLE vs. G. W. WATTERSTON. } 2,912.

And now comes defendant, and in case the exceptions filed in this suit be overruled, but not otherwise, he pleads to the claim filed a general denial, and asks for a trial by jury.

He further prays for costs and general relief.

WHITAKER & FELLOWS, *of Counsel*.

November Term, A. D. 1857.

New Orleans, Saturday, 24th April, 1858.

Court met pursuant to adjournment:

Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

EDWARD NOBLE vs. GEO. W. WATTERSTON. } 2,912.—Order overruling exceptions.

The exception herein filed by defendant came on to be heard, and was argued by counsel, and submitted to the court; whereupon, on consideration whereof, it was ordered that the same be overruled.

April Term, A. D. 1858.

New Orleans, Monday, 3d May, A. D. 1858.

Court met pursuant to adjournment:

Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

EDWARD NOBLE vs. GEO. W. WATTERSTON. } 2,912.—Order transferring cause to jury docket.

It appearing to the court that this case was inadvertently fixed for trial, the same being a jury cause, it was ordered that it be transferred to the jury docket.

April Term, A. D. 1858.

New Orleans, Wednesday, 9th June, 1858.

Court met pursuant to adjournment:

Present, Hon. J. A. Campbell, presiding judge; present, Hon. Theo. H. McCaleb, district judge.

EDWARD NOBLE vs. GEO. W. WATTERSTON. } 2,912.—Submission and Verdict.

This cause was called for trial, defendant's counsel absent. The

following jury were sworn and empanelled to try the same, viz: H. D. Seaman, B. F. Simms, F. G. Randolph, M. M. Simpson, Robt. Geddes, A. M. Hopkins, E. H. Pomroy, E. Parmele, C. Heath, D. L. Ranlett, J. H. Heald, and E. Smith.

Robt. Geddes was appointed foreman of the jury, and thereupon the cause was submitted without argument, and after charge from the court the jury returned the following as their verdict: We, the jury, find for the plaintiff the sum of thirty-seven hundred and eighteen dollars and sixty-five cents, with interest thereon at the rate of eight per cent. per annum from 9th March, 1855, until paid.

ROBT. GEDDES, *Foreman*.

New Orleans, June 9th, 1858.

Whereupon it was ordered that the same be recorded.

Circuit Court of the United States, 5th circuit and eastern district of Louisiana—April Term, A. D. 1858.

New Orleans, Wednesday, 9th June, 1858.

Court met pursuant to adjournment:

Present, Hon. J. A. Campbell, presiding judge; *present*, Hon. Theo. H. McCaleb, district judge.

EDWARD NOBLE vs. GEO. W. WATTERSTON. } 2,912.—Judgment.

By reason of the verdict of the jury herein rendered, and in conformity thereto, it is now ordered, adjudged, and decreed, that the plaintiff, Edward Noble, do have and recover judgment against the defendant, George W. Watterston, for the sum of thirty-seven hundred and eighteen dollars and sixty-five cents, with interest thereon at the rate of eight per cent. per annum from 9th March, 1855, until paid, and costs of suit, with mortgage upon the property described in the petition, and in the act of mortgage thereto annexed.

Judgment rendered 9th June, 1858; judgment signed 14th June, 1858.

THEO. H. McCALEB,
U. S. Judge.

Petition for Writ of Error.—Filed 17th June, 1858.

United States Circuit Court, 5th circuit and eastern district of Louisiana.

EDWARD NOBLE vs. G. W. WATTERSTON. } No. 2,912.

George W. Watterston, the defendant in the suit entitled and numbered as above, avers that there is error in the rulings and

judgment of the court in said suit, which he desires to have corrected by the Supreme Court of the United States. Wherefore, in order that there may be a revisal of said judgment by said Supreme Court, he asks for a writ of error returnable to said Supreme Court according to law; and holding himself ready to furnish and tendering a bond, in a sufficient amount and with competent sureties, to enable him to carry up his said writ, he prays that execution be withheld and all further proceedings suspended in said suit until the final determination of said Supreme Court shall be had, and for general relief.

G. W. WATTERSTON, *Pro Se.*

Order for a Writ of Error.

Let a writ of error be granted in this case as prayed for, upon the defendant furnishing a bond, with security, according to law.

THEO. H. McCALEB,
U. S. Judge.

Bond for Writ of Error.—Filed 18th June, 1858.

Know all men by these presents that we, George W. Watterston, as principal, and John O. Terry, as surety, are held and firmly bound unto Edward Noble in the full and just sum of seven thousand five hundred dollars, to be paid to the said Edward Noble, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 18th day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas lately at a circuit court of the United States, 5th judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein Edward Noble was plaintiff, and George W. Watterston was defendant, judgment was rendered against the said George W. Watterson, defendant; and the said George W. Watterston having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edward Noble, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said George W. Watterston shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good,

then the above obligation to be void, else to remain in full force and virtue.

G. W. WATTERSTON. [L. S.]
JNO. O. TERRY. [L. S.]

Sealed and delivered in the presence of—
J. W. GURLEY.

Jno. O. Terry, surety on this bond, being sworn, says he is worth the sum of $7,500 over and above his debts and liabilities.

JOHN O. TERRY.

J. W. GURLEY, *Com.*

United States of America, Circuit Court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 13 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of Edward Noble vs. George W. Watterston, No. 2,912 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New [L. S.] Orleans, this 26th day of July, A. D. 1858.

J. W. GURLEY, *Clerk.*

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Judges of the Circuit Court of the United States, in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between Edward Noble and Geo. W. Watterston, a manifest error hath happened, to the great damage of the said Geo. W. Watterston, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said